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10/629,119	07/29/2003	Steven Ausnit	769-222 Div.4	5937

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EXAMINER

PASCUA, JES F

ART UNIT PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/629,119
Filing Date: July 29, 2003
Appellant(s): AUSNIT, STEVEN

MAILED
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GROUP 3700

Ronald E. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 25, 2006 appealing from the
Office action mailed July 07, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Serial No. 10/629,213 (notice of appeal filed September 05, 2006, no appeal brief filed to date)

U.S. Patent No. 6,820,395 (appeal brief filed April 14, 2004, application not sent to the Board, notice of allowability mailed June 29, 2004)

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Is Claim 40 properly rejected under 35 U.S.C. § 112, first paragraph for failing to provide antecedent basis for the tamper-evident structure "encasing a first portion of the zipper closure" and the step of "forming an opening in the tamper-evident structure"?

Is Claim 40 properly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Nos. 6,273,607, 6,290,390 and 6,347,885, all to Buchman?

Appellant's brief presents arguments relating to a drawing objection under 37 CFR §1.83(a). This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claim contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,273,607	BUCHMAN	08-2001
6,290,390	BUCHMAN	09-2001
6,347,885	BUCHMAN	02-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 40 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide antecedent basis for the tamper-evident structure "encasing a first portion of the zipper closure" and the step of "forming an opening in the tamper-evident structure". This is a new matter rejection.

Claim 40 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent Nos. 6,273,607, 6,290,390 and 6,347,885, all to Buchman.

(10) Response to Argument

Appellant's remarks concerning the drawing objection are moot, since it relates to petitionable subject matter and not to appealable subject matter, as discussed above.

Appellant's reliance on Figure 25 to show antecedence for a tamper-evident structure "encasing a first portion of the zipper closure" is misplaced. As shown in appellant's Figure 25 and discussed on page 17, line 5 of appellant's specification, the zipper profiles 10, 12 are below perforations 124 and the tamper-evident film extensions

126 are above the perforations 124. Therefore, the film extensions 126 do not "encase" a first portion of the zipper profiles 10, 12, "at least partially" or otherwise.

Appellant's remarks are silent with respect to the rejection of Claim 40 under 35 U.S.C. § 112, first paragraph for failing to provide antecedent basis for the **step** of "forming an opening in the tamper-evident structure". In the absence of appellant's remarks regarding this portion of the rejection, the Examiner maintains that page 17, lines 1-3 of appellant's specification does not support the claimed method step of "forming an opening in the tamper-evident structure". The specification merely draws reference to Figure 25 and states that cut-outs may be replaced with side-cuts 122. There is no express disclosure of the side-cuts being made in the tamper-evident structure as claimed. By referencing Figure 25, there is no way of telling whether the side-cuts were made in the film extensions prior to the formation of the tamper-evident structure or the side-cuts were made after formation of the tamper-evident structure; as claimed.

Appellant's remarks do not dispute the rejection that the Buchman patents anticipate applicant's claim. Instead, appellant attempts to overcome the Buchman patents by alleging that the effective filing date of the present application is April 15, 1999 (based on parent application 09/292,256, now abandoned), which predates the Buchman patents' priority date of January 18, 2000. The Examiner maintains that the effective filing date of the present application is July 29, 2003, which is the filing date of the preliminary amendment containing appealed Claim 40. Appellant is not entitled the

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benefit of the April 15, 1999 filing date of the parent, since the specification, as originally filed, lacks support for the subject matter of Claim 40, which was filed after the Buchman patents' priority date of January 18, 2000.


Appellant's remarks do not convince the Examiner that the specification, as originally filed, provides antecedent basis for the tamper-evident structure "encasing a first portion of the zipper closure" **and the method step** of "forming an opening in the tamper-evident structure". Therefore, the Examiner maintains claim 40 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent Nos. 6,273,607, 6,290,390 and 6,347,885, all to Buchman.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Jes F. Pascua
Primary Examiner

Conferees:


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Anthony D. Stashick
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